

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

GREAT RIVER, L.C.

LeClaire, Iowa

**ADMINISTRATIVE
ORDER**

NO. 2008-WW-32

TO: Michael E. Mahler
President and Manager
Great River, L.C.
28041 230th Avenue
LeClaire, IA, 52753

Steven H. Jacobs
Registered Agent
111 E. 3rd Street
600 Union Arcade Building
Davenport, IA 52801

I. SUMMARY

This administrative order (order) is issued to Great River, L.C. (Great River) due to storm water violations occurring at property located in LeClaire, Iowa. Questions or responses regarding this order shall be directed to:

Relating to technical requirements:

Mark Heiderscheid, Environmental Specialist
IDNR Field Office No. 6
1023 West Madison
Washington, Iowa 52353-1623
Phone: 319/653-2135

Relating to legal requirements:

Diana Hansen, Attorney at Law
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Phone: 515/281-6267

Payment of penalty to:

Iowa Department of Natural Resources
Wallace State Office Building, 502 E. 9th Street
Des Moines, Iowa, 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I (storm water), and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. The River Highlands Subdivision is located in the NW ¼ of Section 14, T 79N, R5E in Scott County, Iowa. The subdivision consists of approximately 47 lots in three additions in LeClaire, Iowa. Homes have not been constructed on all lots to date. Currently, there are approximately 28 homes constructed and occupied in the subdivision.

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2. Notice of incorporation of Great River was filed with the Iowa Secretary of State on March 29, 1994. Under the articles of incorporation, Michael E. Mahler, 28041 230th Street, LeClaire, Iowa 52753, was designated as a manager and president of the company.

3. On January 27, 2005 the Department's Field Office 6 sent Great River a notice of violation (NOV) for storm water violations that were discovered during a January 21, 2005 inspection of the subdivision. The inspector had observed storm water discharges from the River Highlands Subdivision property. The NOV letter noted that no current coverage under the Department's NPDES General Permit No. 2 had been obtained for the construction at this subdivision, which involved land disturbing activities of one acre or more.

4. On March 3, 2005, the Department's Field Office 6 sent another NOV letter by certified mail to Great River (Michael Mahler). The NOV informed Mr. Mahler of the requirements to submit a storm water permit application.

5. Michael E. Mahler, President of Great River, was granted authorization under NPDES General Permit No. 2 on March 4, 2005 and assigned authorization number IA- 2417-8605. Mr. Mahler filed a Notice of Intent to be covered under the general permit on March 1, 2005 and paid a fee of \$1,500.00, which was processed on March 4, 2005.

Authorization under General Permit No. 2 requires the permit holder to have a pollution prevention plan (PPP) for the specific land disturbing activities. The PPP for construction activities is to be implemented so as to minimize pollution from precipitation or snowmelt runoff through or over the disturbed land. Typically, measures include soil stabilization such as temporary or permanent seeding, planting, mulching or other stabilization measures, and structural controls such as dikes, silt fences, sediment traps or basins. Routine inspections and record keeping are required. Adequate storm water control devices were not installed and maintained during ground-disturbing activities, based on observations by the inspector during the January 2005 inspection.

Qualified personnel must inspect disturbed areas and erosion and sediment control measures at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. Reports summarizing the inspections must be made and maintained as part of the PPP. Part V of the permit requires that a copy of the PPP and reports be retained at the construction site or alternative site approved by the Department. Part VI, E, requires the permittee to furnish any information requested by the Department to determine compliance or to furnish any records required to be kept by the permit within a reasonable time.

6. Coverage under General Permit No. 2 expired on September 30, 2006. Although a renewal statement was sent by the Department on July 24, 2006, coverage under the general permit was not renewed. A NOV letter was issued on October 26, 2006 for failure to retain coverage under the general permit.

7. On January 4, 2008 the Department's Field Office 6 sent Michael Mahler, Great River, a NOV letter. The NOV was issued due to the failure of Great River to retain coverage under the Department's General Permit No. 2. During a site visit to River Highlands on March 20, 2007, the Field Office inspector observed several homes in various stages of construction. He also observed that there were no storm water measures in place. During a follow-up visit on December 19, 2007 Field Office inspectors observed two homes under construction and third home that was almost completed.

8. Follow-up letters concerning the failure of Great River to obtain coverage under the General Permit No. 2 were sent by the Field Office on March 13, 2008 and April 21, 2008 requiring that Great River submit the necessary applications and fees to renew its coverage under General Permit No. 2. The Department did not receive the required applications and fees to renew coverage under the general permit. On May 28, 2008 the Field Office sent a NOV letter to Great

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River advising Great River that it was in violation of general permit requirements. The letter required Great River to stop all land disturbing activities upon receipt of the NOV and to obtain coverage under the general permit. The letter stated that Great River was required to initiate the permit application process within 15 days of receipt of the NOV and to pay all back fees. The letter stated that once general permit coverage is renewed, Great River is to comply with the general permit conditions at all times. Great River has paid past due fees and has renewed coverage under the general permit.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Environmental Protection Commission (Commission) has adopted federal regulations pertaining to the issuance of National Pollutant Discharge Elimination System (NPDES) permits for storm water discharge, at 567 IAC 60.2 and in 567 IAC chapter 64. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. Number 10 under this definition includes "construction activity" including clearing, grading and excavation activities. Excluded are operations that result in the disturbance of less than one acre of total land area that are not part of a larger common plan of development or sale.

2. Subrule 64.4(2) provides that the Director may issue general permits that are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities: (1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(2) adopts Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)"b," the applicant is authorized to discharge, unless notified by the Department to the contrary. Subrule 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. The above stated facts show noncompliance with these provisions since general permit coverage was not obtained for the construction project in 2005. In 2006 coverage under the general permit lapsed and a NOV was issued. Additional NOVs were issued for failure to be covered under General Permit No. 2 for homes under construction during 2007 and 2008.

3. General Permit No.2, Part IV, provides that the permittee must develop and implement a "pollution prevention plan" (PPP) in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. Specific stabilization and structural practices appropriate to the site and activities must be identified and implemented as part of the PPP. Disturbed areas must be stabilized within 14 days if no construction activity will take place within 21 days.

Plans must be updated to address changes in a facility's design and operation, and must be modified to address deficiencies noted by the Department. A copy of the plan is required to be furnished to the Department upon request. Qualified personnel must inspect disturbed areas and erosion and sediment control measures at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. Reports summarizing the inspections must be made and maintained as part of the plan. Part V of the permit requires that a copy of the plan and reports be retained at the construction site or alternative site approved by the Department. Part VI, E, requires the permittee to furnish any information requested by the Department to determine compliance or to furnish any records required to be kept within a reasonable time.

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V. ORDER

THEREFORE, the Department hereby orders Great River to do the following:

1. Great River is required to maintain coverage under the Department's NPDES General Permit No. 2 for storm water for all housing development projects at River Highlands Subdivision. Great River is required to comply with the conditions and requirements of General Permit No. 2 and to pay all required fees for General Permit No. 2 coverage. Payment of fees includes all back fees that have not been paid and all future fees due until the property is stabilized and coverage under the general permit is no longer required.
2. Great River is required to pay an administrative penalty of \$10,000.00. The penalty shall be paid to the Department within 60 days of receipt of the order. If Great River appeals this order as outlined in Section VII below, the penalty is not due until the appeal is resolved by a final administrative order, final court order or agreement of the parties.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties for the storm water violations involved in this matter and authorizes referral to the Attorney General for enforcement at the Director's request. More serious criminal sanctions are also available pursuant to that Code provision.

In addition, Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties for violations that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with the assessment of immediate administrative penalties to Great River.

a. Economic Benefit. The failure of Great River to maintain coverage under the Department's NPDES General Permit No 2 resulted in cost savings to Great River. The amount of \$1,000.00 is assessed for this factor.

b. Gravity of the Violation- One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. Iowa Code section 455B.191 authorizes civil penalties of up to \$5,000.00 for each day of a violation of the Department's water quality requirements. Obtaining authorization under NPDES General Permit No. 2 is a major requirement of the storm water program for housing developers such as Great River. Failure to properly manage stormwater runoff from construction sites degrades surface water quality and deposits excess sediment in water channels. Sedimentation of Iowa's waterways is a serious problem, and regulatory agencies have recognized that uncontrolled runoff is a significant contributor to these problems. Degraded water quality harms aquatic life, prevents the attainment of state water quality goals, and causes a decline in the quality of life generally. Great River has received numerous storm water related NOVs since 2005. The amount of \$4,500.00 is assessed to Great River for the multiple storm water violations.

c. Culpability- Great River, the developer of this housing project, had the obligation to be aware of the legal requirements for obtaining required permits, including coverage under the general storm water permit. Once the proper permit was obtained, Great River, the developer, had the duty to comply with the permit as issued and Department rules concerning storm water. The Department finds that Great River should be assessed \$4,500.00 for storm water violations.

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VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with section "V. Order" constitutes full satisfaction of all requirements pertaining to the violations described in section "IV. Conclusions of Law" of this order. Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 26 day of
Nov, 2008

Great River, L.C.- NPDES General Permit No.2 Authorization No.10687-10484, Field Office No.
6- Mark Heiderscheid, Legal Services - Diana Hansen, U.S. EPA- Wastewater, I.C.7.a.